

Appeal Decision

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th March 2020

Appeal Ref: APP/N5090/X/19/3236545

33 Ranulf Road, Cricklewood, London NW2 2BS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by the Christoforou Family against the decision of the Council of the London Borough of Barnet.
 - The application Ref 19/3922/192, dated 16 July 2019, was refused by notice dated 13 August 2019.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is construction of an outbuilding in the rear garden.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

Procedural Matter

2. The description of development in the heading above has been taken from the supporting letter¹ accompanying the application as indicated in the 'Description of Proposal' on the application form.

Main Issue

3. Planning merits are not relevant in this appeal. My decision rests on the facts of the case, relevant planning law and judicial authority. The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities. The main issue therefore is whether the Council's deemed refusal to grant a LDC was well-founded.

Reasons

4. Amongst other things, Class E, of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) sets out that the provision within the curtilage of a dwellinghouse "any building.... required for a purpose incidental to the enjoyment of the dwellinghouse as such" is permitted development. It is not disputed that the proposed building would be

¹ Appellant's supporting letter dated 16 July 2019.

within the curtilage of the dwellinghouse and its dimensions would not infringe the requirements of paragraphs E.1. of Class E of the GPDO.

5. There is no dispute that a swimming pool with associated seating area, laundry/ironing room, playroom, gym area, changing room with steam shower, a pool equipment storage area and a garden maintenance equipment storage room are such uses which could be considered as incidental to the enjoyment of the dwellinghouse. The main argument in this case is whether due to its scale, the proposed building would not be incidental.
6. My attention has been drawn to case law² which refers to the need to consider whether "the nature of the activities carried out in the proposed building ensure they are incidental or conducive to the very condition of living in the dwellinghouse." It goes on to say that "the physical sizes of buildings could be a relevant consideration in that they might represent some indicia as to the nature and scale of the activities." "When a matter is looked at as a whole, size might be an important consideration but not in itself conclusive." It was held that "incidental connoted an element of subordination in land use terms in relation to the enjoyment of the dwellinghouse."
7. The Council submits that the footprint of the proposed building would not be subordinate to the footprint of the main dwellinghouse. Notwithstanding the discrepancy between the main parties regarding the area of its footprint, the proposed building would be of a greater depth than the main dwellinghouse. However, the proposed building would be single storey in contrast to the two/three storey nature of the main dwellinghouse. Thus, whilst the footprint of the proposed building may be larger than the footprint of the original dwelling, its overall floor area would be considerably smaller than the floor area of the original dwellinghouse. Moreover, the main dwellinghouse provides 5 bedrooms and has a generous rear garden. Taking all these factors into consideration, I consider that the proposed building would appear subordinate in scale and would not result in an unbalanced relationship between the main dwellinghouse and the proposed outbuilding.
8. In addition, the proposed building is not an unreasonable size to accommodate a family swimming pool and its associated seating area and changing room with steam shower. Moreover, having regard to the appellant's submitted evidence which includes a site layout plan³ of the proposed building, I consider that the room sizes of the laundry/ironing room, playroom, gym area, pool equipment storage room and garden maintenance storage room whilst generous are not unduly excessive given their proposed uses and the various items intended to be stored. Having regard to the evidence submitted, they are not proposed to be primary living accommodation such as bedrooms, kitchens or bathrooms and thus their provision would not be unreasonable as additional facilities for a family to enjoy.
9. As such, on the evidence available to me and having regard to all other matters raised, I consider that, as a matter of fact and degree, it has been shown that the proposed building is reasonably required for the purposes incidental to the enjoyment of the main dwellinghouse.

Conclusion

² Emin v Secretary of State for the Environment and Mid Sussex District Council [1989] JPL 909

³ Drawing Number 2018-037-900 Rev E.

10. For the reasons given above, I conclude, on the evidence now available, the Council's refusal to grant a certificate of lawful use or development in respect of the proposed construction of an outbuilding to the rear of 33 Ranulf Road, Cricklewood, London NW2 2BS was not well founded and that the appeal should succeed. I exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Elizabeth Jones

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 16 July 2019 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed outbuilding in the rear garden would be permitted development falling within Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 for development permitted under the provisions of Class E of Part 1 of Schedule 2.

Signed

Elizabeth Jones

Inspector

Date: 26th March 2020
Reference: APP/N5090/X/19/3236545

First Schedule

Proposed construction of an outbuilding in the rear garden as shown on drawings: Nos 2018-037-901, 2018-037-899, 2018-037-900 Rev D.

Second Schedule

Land at 33 Ranulf Road, Cricklewood, London NW2 2BS

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 26th March 2020

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Land at: 33 Ranulf Road, Cricklewood, London NW2 2BS

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Scale: not to scale

